REMARKS

Claims 1-5, 7-11, 13, and 15-19 are all the claims pending in the application. Claims 6, 12, 14, and 20 have been cancelled herein without prejudice or disclaimer. Claims 1, 3, 7, 9, 13, 15, and 17 and the specification have been amended herein. Claims 1-20 stand rejected on prior art grounds. Claims 3-5 stand rejected upon informalities. Moreover, the oath/declaration is objected to as well as the information disclosure statement. Applicants respectfully traverse these rejections based on the following discussion.

I. The Oath/Declaration

The Oath/Declaration is objected to as being considered to be informal. Accordingly, the Applicants have resubmitted a formal Oath/Declaration on September 27, 2006. In view of the foregoing, the Examiner is respectfully requested to reconsider and withdraw the objection.

II. The Information Disclosure Statement

The information disclosure statement filed on April 20, 2004 has not been considered by the Examiner as failing to comply with 37 CFR 1.98, 1.98 and MPEP §609. Accordingly, the Applicants have resubmitted an IDS in compliance with the aforementioned statutes on September 27, 2006. In view of the foregoing, the Examiner is respectfully requested to reconsider and withdraw the objection and to consider the IDS.

III. The 35 USC §112 Rejections

Claims 3-5 are rejected under 35 USC §112, second paragraph, as being indefinite for

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failing to particularly point out and distinctly claim the subject matte which the applicant regards

as the invention. Accordingly, claims 3, 9, and 17 have been amended to more properly and

distinctly claim the invention. Moreover, claim 1 has been amended to recite, in part "...a

method for revising a software application used by a plurality of nodes in a computer

network...." in order to further distinctly claim the invention. Claims 7, 13, and 15 have also

been similarly amended in this regard. In view of the foregoing, the Examiner is respectfully

requested to reconsider and withdraw the rejections.

IV.   The Prior Art Rejections

Claims 1-5, 7-11, 13, and 15-19 stand rejected under 35 U.S.C. §103(a) as being

unpatentable over Sinander (U.S. Patent No. 6,385,770 B1). Claims 6, 12, 14, and 20 stand

rejected under 35 U.S.C. §103(a) as being unpatentable over Sinander, in view of Moore et al.

(U.S. Publication No. 2003/0092438), hereinafter referred to as "Moore". Applicants

respectfully traverse these rejections based on the following discussion.

The claimed invention, as provided in amended independent claims 1, 7, 13, and 15

contain features, which are patentably distinguishable from the prior art references of record.

Specifically, claims 1, 7, 13, and 15 generally provide, "applying a downgrade to a first previous

level of software that understands both said old and new persistent data structure formats;

converting all persistent data structures into the old persistent data structure format; and applying

a downgrade to a second previous level of software that understands said old persistent data

structure formats. wherein the nodes are adapted to communicate with one another at a time

when said nodes are operating at different software levels with respect to one another within said

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<u>computer network.</u>"

Page 6 of the Office Action admits that Sinander does not teach software downgrades,

but instead uses Moore to attempt to teach this concept. However, in Moore there is only a

single level downgrade, whereas in the Applicants' claimed invention, there is a two-level

downgrade (i.e., downgrade to a first previous level of software and downgrade to a second

previous level of software). Page 6 of the Office Action suggests that Fig. 3, item 102 of Moore

teaches the first level downgrade and Fig. 4, items 116-122 of Moore teaches the second level

downgrade. However, the associated text in the description of the preferred embodiments of

Moore corresponding to Figs. 3 and 4 (see page 3, paragraphs [0022] and [0024] of Moore) does

not teach a second level downgrade. Rather, page 3, paragraph [0022] of Moore merely states:

> An upgrade or downgrade of service generally entails the installation of new application software or hardware on the secondary controller 54. At a step 102, the secondary controller 54 has its application software or hardware 64 upgraded (i.e., the application is updated to a newer release), or downgraded, (i.e., the application has an older version installed). At a step 104, the secondary controller 54 prepares to assume control of the system 50, specifically, the secondary application 64 notifies the secondary control block version table 76 of the new application version number (i.e., the version number of the application that was just installed). Then, at a step 106, the checkpoint service 82 communicates with the primary control block 70 and updates the control block version table 74 to indicate the new secondary application version. At a step 107, the primary controller 52 begins to shutdown or quiesce.

Moreover, page 3, paragraph [0024] of Moore merely states:

> At a step 116, the secondary controller 54 takes over primary control of the system 50 and opens the checkpoint replica database 80 for read and write access, while the primary controller is prepared for its own software upgrade or downgrade. Next, at a step 118, the system 50 determines if the replica state data needs to be converted (i.e., the new application is an upgrade). If the

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replica state data needs to be converted, indicating that the system
has been upgraded, a step 120 converts the data to the new version
format and continues processing at a step 122. After conversion,
or if the step 118 determined that no conversion was necessary, the
secondary processor 60, which now controls the system 50,
imports the state data from the replica state database 80 to the local
database 68 at the step 122. At step 124, normal operations may
resume, as described herein above.

These passages clearly indicate that only one level of software upgrades/downgrades

occur in Moore. If two levels of software upgrades/downgrades were to occur in Moore then

Moore would have referred to the "new application version number (i.e., the version number of

the application that was just installed)" as the "version number of the application that was

installed prior to the new application version number" or something similar. However, only one

level of upgrade/downgrade occurs in Moore, therefore, Moore either alone or in combination

with Sinander fails to teach all of the elements of the Applicants' claimed invention.

Next, there is no indication in Sinander of how its system and method would operate in a

downgrading process. Clearly downgrades were known to Sinander, however the reason why

there is no mention of downgrades anywhere in Sinander, where ample opportunity was

provided, is clear evidence that Sinander was never intended to operate in a downgrading

process. Similarly, there is no indication in Moore of how Sinander's system would operate in a

downgrading process. In fact, one of ordinary skill in the art would not find a combination of

Moore with Sinander obvious given Sinander's reluctance to even discuss downgrading in its

processes or even suggesting that it is possible within the context of Sinander's system and

method to include a downgrading process. Furthermore, there is no evidence that Sinander and

Moore would likely be combinable given that the USPTO itself has classified each invention in

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completely different classifications (Sinander is classified in U.S. Class 717/170, 717/169,

707/203, and 709/221 whereas Moore is classified in U.S. Class 455/423 and 455/419).

Accordingly, one of ordinary skill in the art would not be so inclined to combine parts of

inventions together that have been classified by the USPTO in completely different classes, and

as such inherently not readily combinable.

Accordingly, Sinander alone or in combination with Moore fails to teach all elements of

the Applicants' claimed invention, and as such, the Applicants' independent claims 1, 7, 13, and

15 are patentable over Sinander alone or in combination with Moore. Similarly, the Applicants'

dependent claims 2-5, 8-11, and 16-19 are similarly patentable over Sinander alone or in

combination with Moore based on their dependence from patentable independent claims and for

the additional features they teach. Moreover, the Applicants note that all claims are properly

supported in the specification and accompanying drawings. In view of the foregoing, the

Examiner is respectfully requested to reconsider and withdraw the rejections.

V.   **Formal Matters and Conclusion**

With respect to the rejections to the claims, the claims have been amended, above, to

overcome these rejections. In view of the foregoing, the Examiner is respectfully requested to

reconsider and withdraw the rejections to the claims.

In view of the foregoing, Applicants submit that claims -5, 7-11, 13, and 15-19, all the

claims presently pending in the application, are patentably distinct from the prior art of record

and are in condition for allowance. The Examiner is respectfully requested to pass the above

application to issue at the earliest possible time.

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Should the Examiner find the application to be other than in condition for allowance, the

Examiner is requested to contact the undersigned at the local telephone number listed below to

discuss any other changes deemed necessary. Please charge any deficiencies and credit any

overpayments to Attorney's Deposit Account Number 09-0441.

Respectfully submitted,

Dated: 12/12/2006

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